

**LEGAL EMPOWERMENT OF THE POOR (LEP): A  
PROJECT CASE STUDY USING HRBA PERSPECTIVE**

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## **TABLE OF CONTENTS**

1. INTRODUCTION	1
2. BACKGROUND OF THE PROJECT CASE	4
3. OVERVIEW OF THE PROJECT CASE	5
4. HISTORICAL ACCOUNT OF THE PROJECT CASE	6
5. INSTITUTIONAL ISSUES AND CONSTRAINTS	9
6. ANALYSIS OF THE PROJECT CASE	9
7. PROPONENT'S USER SATISFACTION ON THE HRBA	22
8. LESSONS LEARNED FROM HRBA	23
9. RECOMMENDATIONS	
10. IMPLICATIONS	

## **BIBLIOGRAPHY**

### **APPENDICES**

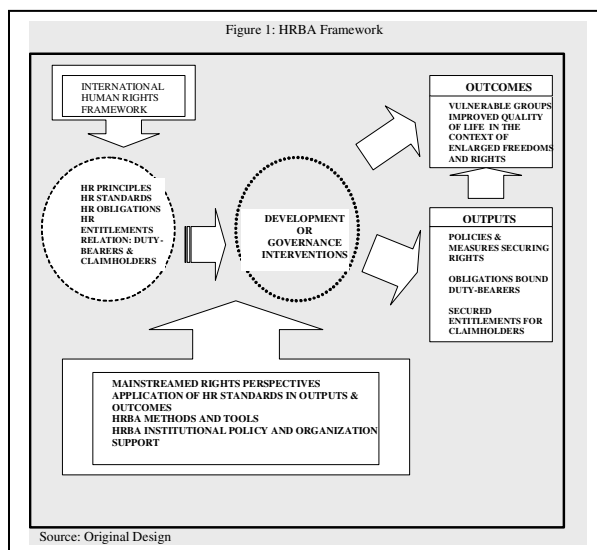
- A - DEFINITION OF TERMS
- B - HUMAN RIGHTS PRINCIPLES & THEIR  
MEANINGS
- C. - NORMATIVE CONTENT/BASES OF  
HUMAN RIGHTS

# A PROJECT CASE STUDY ON LEGAL EMPOWERMENT OF THE POOR (LEP):<sup>1</sup>

BY: VALENTINO G. BAAC, PH.D AND ROSETTE GILDA C. LIBREA, DPA

## 1. Introduction

This case involves a project of the Economic, Social and Cultural Rights, Asia, Inc. The ESCR Asia is committed to the understanding and articulation of Asian perspectives on human rights in general and economic, social and cultural rights in particular and also, in developing agreements on these principles and strengthening commitment to promote ESCRs, specifically in Southeast Asia and other Asian countries.



Upon inception of this project entitled “Legal Empowerment of the Poor” by ESCR Asia, Inc. as the proponent of the project by the UNDP, its Board of Trustees discussed the research outline or framework to help give direction to the project. As guide, the board of the organization agreed upon the common terms of reference, which was made truly rights-based. ESCR, Asia adopted as a general policy that the policy measure would be along the basic principle that legally empowering the poor meant going beyond formal laws and that empowerment meant participation in

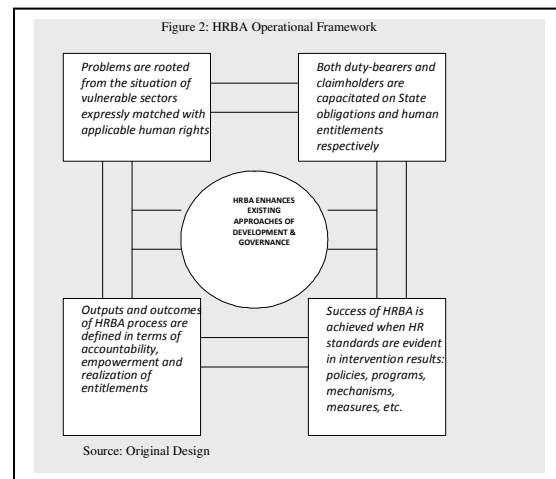
the decision making processes and governance concerns that affect them. Coupled with this policy is the condition set by ESCR Asia that the informal sector has special need in terms of capacitating itself on relevant vulnerability and corruption issues that affect their status in society

This case is a documentation and analysis as to how the human rights-based approach (HRBA) was applied in the project, and not a case study of the project itself.

<sup>1</sup> A review of the policy studies on the Legal Empowerment Project of the ESCR, Asia, Inc., conducted through a case study method.,

Thus throughout this case document, the project will be referred to as the “project case”. It approximates the application of the approach in the project, the organization of the proponent, the method and process through which the approach was applied in the project, the various implementation, institutional and organizational issues and constraints encountered by the project in applying the approach, the success indicators of the approach in the project, both at the output and outcome level, the reaction of the proponent of the project as user of the approach, the lessons learned in applying the approach and incorporating as well the future direction, replicability and sustainability of the approach.

Conceptually, HRBA has its legal basis rooted in the international human rights framework. Within the context of this framework the approach is conceived as a process to mainstreaming human rights in every stage and aspect of development in order to improve the quality of life of people across the globe. To understand the approach, its core elements as applied in this study must be comprehensively understood. These elements are: 1) a paradigm shift from needs to rights; 2) operationalization of human rights principles; 3) application of human rights standards; and 4) implementation of human rights obligations and entitlements by duty-bearers and claimholders. Essentially, the mainstreaming of human rights provides the objective standards for effectiveness of development, accountability and evaluative role as the criteria for improving the quality of life of the vulnerable and disadvantaged sectors.<sup>2</sup> . While Figure 2 suggests the application of the HRBA core elements in the project or intervention processes.



## 2. Background of the Project Case

In 2006, the UNDP sought the engagement of the ESCR, Asia to implement a project on legal empowerment of the informal sector in the Philippines. The project is an offshoot of the mission conducted by Dr. Naresh Singh of the United Nations High Level Commission on Legal Empowerment of the Poor. The mission was intended to develop sound policy recommendations to reduce poverty in the country through legal empowerment. Dr. Singh recommended to UNDP to undertake initiatives to address the four (4) crucial pillars of national and international efforts to give the poor protection and

<sup>2</sup> UNDP Rights-Based Development Training Manual. UNDP. 2002. pp 16-17.

opportunities. These pillars are (i) access to justice and the rule of law, (ii) property rights, (iii) labor rights and (iv) business rights.

Under the Governance Portfolio of the GOP-UNDP, the ESCR Asia is expected to implement a legal empowerment project that demonstrates the use of HRBA in the designing and implementation of the project especially in the policy reforms along the four (4) thematic pillars of legal empowerment.. The project case seeks to attain the following purposes:

- a) To explore how the HRBA was applied in the various thematic policy papers of ESCR, Asia and in the draft Magna Carta, along the pillars of legal empowerment of the poor;
- b) To examine to what extent the approach was used in the participatory process involved in the formulation of the thematic policy papers;
- c) To draw up lessons on how best the HRBA can contribute to the enhancement of the development and governance goals for the informal sector.

### **3. Overview of the Project Case**

The project was designed towards the review and formulation of appropriate legislative, judicial and administrative measures and mechanisms focused on the four thematic agenda on the legal empowerment of the poor.

In order to implement the project, the ESCR Asia envisioned the conduct of systematic focus group discussions and national conference with key sectors and partners in government, civil society organizations and basic sectors. Such consultations were designed to take off from the policy papers on the thematic agenda of legal empowerment of the poor, which would be prepared, consolidated and presented through various consultation fora among key basic sectors, government organizations and private sectors from the different parts of the country. The results of these consultations would culminate in the formulation of action plans and monitoring of commitments of the project constituencies.

The project case accomplished significant gains in the aspect of the use of the elements and processes of the HRBA in the project. ESCR Asia was able to produce four thematic policy papers along the four (4) focus areas of the project, which further led to the drafting of the Magna Carta for Informal Sector in the country. Hand-in-hand with achieving this gain is the massive participation that was generated among the informal sector involving six (6) basic sub-sectors to include: vendor, small transport, home-based, fisher-folks and farmers. Raising of awareness on the different rights of the informal sector was also done through community –based approaches in at least six strategic areas in the country.

Under a purely developmental framework, such very intricate analysis and formulation made covering the thematic policies and Magna Carta could not have been possible. The issue of legal empowerment was given a face and an address with the enlistment and participation of the different sub-sectors of the informal sector all over the country, which were statistically unknown in the past.

The twelve-month work and preparation of the project proved to be meaningful in bringing about a healthy and constructive engagement of both government and non-government frameworks in dealing with the human rights concerns of the informal sector. The application of HRBA was exhaustively done in terms of being able to mainstream human rights standards of the informal sector. The use of human rights advocates and practitioners in the writing up of the policy papers and Magna Carta through a consultative process proved to be the most appropriate method of HRBA in the project.

Specific to this case, the human rights-related mandate of the ESCR Asia worked to its advantage. The operationalization of the HRBA parameters to include the human rights principles, normative content and application of obligations and entitlements proved to have been implemented with greater ease. Likewise the use of popular human rights materials that were designed and produced by human rights consultants and volunteer organizations tapped by ESCR Asia made significant contributions to facilitating the mainstreaming of the approach in the project.

#### **4. Historical Account of the Project Case**

At the outset, the ESCR Asia, Inc. made a conscious effort to promote and practice the use of HRBA in the project. It formulated a comprehensive right-based policy framework for the development of policy measures that entailed an exhaustive review of existing and pending legislations with those of the ICESCR and other relevant international and domestic labor laws. This was followed by a mobilization of networks of the informal labor throughout the country that participated in both the regional consultations and national consultation. The policy dialogues and consultations were aided by information materials in popular forms showing advocacies on specific rights of the informal sector. The documentation, analysis and interpretation of the various results of the policy consultations were supplemented by the inputs of the different law organizations in the country, concerned government agencies and academic and research organizations and media organizations involved in human rights advocacy work.

The different strategies used to effect HRBA at every stage of the project included among others, the organization of rights-based constituency that was built into advocating the legal empowerment of the basic sectors. Representatives from different organizations of informal sector and sub-sectors participated in the various consultations. They represented the areas of Luzon, Visayas and Mindanao. Policy and social dialogues were advocated between these organizations of vulnerable sectors with national

government agencies and local government units that were focused on the needs and concerns of the informal sector using a rights perspective.

Starting November 2006 to February 2007, the Board of Trustees of ESCR-Asia met at least three times to tackle the framework and appropriate design of the national consultation processes. The bottom-up-bottom approach (or grassroots-experts approach) was reaffirmed as the effective methodology in the drawing up of the four thematic papers. It was agreed that at least two focus-group discussions with grassroots and experts be conducted to enhance the major documents and to realize the objectives of the endeavor.

The basic sectors identified and covered from Luzon, Visayas and Mindanao were those coming from non-corporate construction work, small transport, vendors, home-based, fisher folks and farmers.

From January-March 2007, writers were identified and briefed – *Atty. Glenda Litong for Access to Justice and Rule of Law, Dr. Amado Mendoza- Property Rights, Atty. Edmund Lao and Jeremy Inocian- Labor Rights and Reginald Indon- Legal Mechanisms for Empowering Informal Businesses*. The writers employed not only review of existing literature on the topic but initiated interviews with key informants from both key government agencies, basic sectors and the academe. The first drafts of the papers were subjected to reviews not only through focus group discussions with experts and basic sector groups but also of the Review and Advisory Panel members. Relevant and pertinent case studies were also researched to substantiate the guidelines and terms of reference of each thematic paper.

From March-April 2007, a 12-member Advisory Panel was formed and composed of well-known human rights advocates, legal luminaries, civil society leaders, academics, and former and current government officials who believe in the strength of legal processes/mechanisms and structures in addressing and crafting an anti-poverty agenda. The role of the Advisory Panel was defined. More importantly, given their expertise, the members were asked to further substantiate the contents of the draft thematic papers and to help advance the Philippine initiative in utilizing legal system to empower the marginalized section of society. Series of consultations were held from March to June 2007 to orient and discourse on the LEP initiative, get feedbacks on the four documents as well as fortifying their respective commitments to champion the LEP agenda. These efforts paid off as members of the Advisory Panel proved to be very helpful in providing comments/inputs that further enhanced the contents of the four thematic papers and in putting forward viable proposals/policy recommendations.

In April, 2007, after the creation of the advisory panel, ESCR-Asia deemed it necessary to conduct consultation activities with grassroots leaders concerning the design, content and time-frame of the envisioned national focus group discussions. ESCR-Asia met at least 14 major informal sector organizations in Metro Manila, 20 regional informal sector leaders and organizations in Cebu City, 12 in Cagayan de Oro City and 8 in Zamboanga City between end March and April 2007. In these meetings,

target participants (participating organizations, leaders) for the national FGD were not only identified but also of the purpose of the endeavor. For enlightened participation of at the local level, the executive summaries of the papers were also translated into Filipino and Cebuano and distributed to the IS leaders before the actual consultations. Highlighted in these materials are the various rights and concerns of the informal sector.

The results of the deliberation of the Advisory Panel were also turned in for presentation in Focus Group Discussions (FGDs) in strategic areas. In order to address the problems and concerns of the informal sector to the roots, which is typical of the HRBA, the FGD design allowed much participation from the sector in order to solicit opinions and views of grassroots leaders, human rights advocates and other stakeholders on the thematic policy papers. Two national focus group discussions were held. In the FGD with Basic Sector Leaders (Cebu City, May 18-22), thirty participants from different parts of Luzon, Visayas and Mindanao attended this four-day gathering. A news article capturing the highlights of the event came out in one local broadsheet in Cebu City. The same FGDs were run in Quezon City on June 1, 2007. Around forty select officials of government agencies, representatives from the private sector, leaders of non-governmental organizations, and church institutions, and academicians took part in this gathering. Feedbacks and recommendations of the participants in the two FGDs have been considered by the authors in coming up with the final version of their respective thematic papers.

These FGDs were followed by a national policy conference at the Makati Shangri-La Hotel on July 25-26, 2007. Aside from the regular staff, ESCR-Asia contracted at least four people to assist in the preparation of the National Policy Conference held on July 25-26, 2007. Adopting the multi-stakeholder approach to the endeavor, at least 60 key government agencies, 50 basic sectoral groups, 20 diplomatic, 20 from academe and 50 from non-government organizations and people's organizations were targeted to participate in the conference invitations, to include venue preparation and the development of an LEP kit took more than a month-preparation. A major breakthrough in social dialogue on the empowerment of the poor was the gathering of duty-bearers and claimholders that made up a multi-stakeholder representations from government, civil society and basic sectors from Luzon, Visayas and Mindanao through a National Policy Conference (NPC) held at the Makati Shangri-La Hotel last July 25-26, 2007. More than a hundred participants including some members of the diplomatic e.g. European Union, the Royal Norwegian Embassy as well as media attended the said event. During the National Policy Conference, the following government agencies pledged and committed to champion the cause of the poor: Asian Development Bank, Dept. of Labor, Mindanao State University (MSU), the National Anti-Poverty Commission (NAPC) and the National Economic Development Authority (NEDA). These were participated by the National Government Agencies and NGOs e.g. NEDA and ESCR-Asia, Phil. National Police (PNP) and ESCR-Asia. Presidential Management Staff (PMS) and informal sector groups participated in the event.

After four months of revision, editing to include lay-out of the four thematic papers and the integrative paper, the policy resource book was finally published and



launched last December 10, 2007, as a fitting commemoration of the Human Rights Day. It was attended again by both duty-bearers and claimholders of legal empowerment issues coming from select government agencies, informal sector subgroups (home-based workers, small fisher-folks, farmers, vendors, and small transport). The launching was matched with popularization of the human rights concerns of the informal sector through conduct of Regional Caravan of the Legal Empowerment of the Poor. To continue the nurturing of “champions” among the duty-bearers and the claimholders for the legal empowerment of the poor, ESCR-Asia designed and started the caravan to the regions. After the launching of the policy resource book in Manila, the Cebu City Administration was the first partner in the said caravan.

## **5. Institutional/Organizational Issues and Constraints**

ESCR, Asia has, within its mandates and resources effectively managed a rights-based policy reform for the legal empowerment of the poor through a massive national and local consultation involving not only the major informal groups of the sector but even the different sub-sectors with appropriate geographical representations in the different islands and regions of the country.

It encountered major organizational constraint in that of being a relatively small organization with few core staff to manage consultations, which have both national and local dimensions. Although the organization was able to tap some help from different non-government organizations, the entire consultation process involved in the validation of the thematic policy papers and the crafting of action plans at various levels proved to be a major constraint.

## **6. Analysis of the Project Case**

As envisioned, the human rights orientation of project results is only made possible through a deliberate mainstreaming approach that was made possible based on the conceptual framework on HRBA. However, the real test of the effectiveness of HRBA is based on the human rights content of both the policy papers and the draft Magna Carta, which is examined thoroughly as follows:

1. Human Rights Content Analysis of the Four Thematic Policy Papers on Legal Empowerment of the Poor.

Adopting HRBA to legal empowerment of the poor means understanding development not only as the economic, social, political and cultural process of achieving the realization of human rights and freedoms of the poor, vulnerable and marginalized but above all as the empowerment and capacitating of these people to make choices and decide what this process of expansion should look like. Such approach was tediously applied to this project. Both the content of and the process through which the policy framework evolved, were products of massive and substantive consultations. Content wise, the four (4) thematic papers were able to adequately produce a rights-based policy

framework that could effectively serve as basis for subsequent legislative, judicial and administrative measures for the legal empowerment of the poor. These thematic papers address the legal empowerment agenda of: access to justice and rule of law; property rights, informal labor and legal mechanisms to empower informal businesses. Process wise, all the thematic papers underwent a tedious combined bottom-up and top-bottom approaches, which is typical of the HRBA. Interview and collection of experiences from key stakeholders from both government and civil society groups to include vulnerable sectors, were undertaken. Organization of panel of advisers representing different expertise and interests were made to comment is built into the consultation process. Broader consultations, from the local, regional and national levels, were likewise, considered, involving wider coverage of stakeholders especially the Philippine Informal Sector.

This section of the case study highlights only some features that demonstrate the use of the HRBA.

a) . Access to Justice and Rule of Law<sup>3</sup>

On the thematic policy agenda entitled “*Reducing Poverty and Ensuring Access to Justice through legal Empowerment of the Poor*” the policy paper offered an alternative development paradigm, which defined “*Poverty, aside from making people unable to meet basic food and non-food items, also results in the deprivation of rights, in vulnerability and marginalization, where the poor is unable to claim and assert what should be their due.*” The paper also made more definitive qualification of the poor as those who do not have or are deprived of means by which they can secure livelihood to meet their daily basic needs and realize their basic human rights.

**Box 1 -Access to Justice of the Informal Sector**

*In the context of the capacities of the judiciary as the duty-bearer, the issues of access to justice and rule of law have always been “institution-oriented.”*

*Thus, its approach is basically “institutional reforms” that addresses the typical menu of problems in the Philippine Legal System. Identified under the Action Program for Judicial Reforms (APJR) are the perennial problems of: case congestion and delay, budget deficiencies; politicized system of judicial appointments; lack of judicial autonomy; need for re-engineering the human resources development system to support continuing capacity improvement in the provision of legal and judicial services; dysfunctional administrative structure and operating systems accompanied by deficient court technologies and facilities; and the need to improve public information and collaboration with civil society.*

*The APJR touched on access to justice but the issues identified are again institutional in features. These are: delays in judicial proceedings; erroneous decisions rendered by lower courts; prohibitive cost of litigation; and inadequacy or lack of information about the judicial system.*

Also the paper introduced rights-based definitions of three (3) critical concepts such as legal empowerment, access to justice and rule of law (including rule of law

<sup>3</sup> Atty. Glenda T. Litong. *The Way Forward: a Policy Resource Book on legal Empowerment of the Poor in the Philippines – Thematic Paper 1: Reducing Poverty and Ensuring Access to Justice through Legal Empowerment of the Poor.* ESCR Asia. 2008. Pp. 50-122.

orthodoxy). The use of the concept of legal empowerment is defined as the process of acquiring critical awareness about rights and law, the ability to assert rights, and the capacity to mobilize for change.<sup>4</sup> As indicated in the paper, the six (6) key uses of the term empowerment as espoused by Oakley (2001) was considered as follows: empowerment as participation, empowerment as democratization, empowerment as capacity building, empowerment through economic improvement and empowerment and the individual. These five uses of the term empowerment in the thematic paper is very much compliant with the way empowerment as a human rights principle is defined, as that which views the development process as empowering in itself that implies building the necessary capacities in stakeholders, power to act for and on their behalf to claim their rights and to bring about necessary changes toward the full realization of all human rights<sup>5</sup>

The second concept of rule of law has been characterized in many ways: i.e. the rule of law prevails where the government itself is bound by the law; every person in society is treated equally under the law; the human dignity of each individual is recognized and protected by law and; justice is accessible to all.<sup>6</sup> Under a rights-based framework, the human rights principles of legislative capacity and rule of law requires that the capacity of the legislature to enact laws that aim to uphold the inherent dignity of every person is important to the exercise and enjoyment and realization of all human rights. In which case, all persons are equal before the law, and are entitled to equal protection. Without a sound legal framework, the same as without an independent and honest judiciary, economic and social development collapse.<sup>7</sup> Given this premise, the paper seeks to focus on interventions and initiatives that aim to improve rule of law in a particular context, as has been described as the “rule of law orthodoxy”, i.e., a set of ideas, activities and strategies geared toward bringing about the rule of law, often as a means towards ends such as economic growth, good governance and poverty alleviation.<sup>8</sup>

The third concept on Access to Justice by the poor has been incorporated in the rule of law orthodoxy, where the former is considered a critical component of the latter. Thus the paper, posits that legal empowerment aims to create an environment that will enable the poor to overcome the constraints that prevent them from accessing the legal system, allow them to gain more control over their lives through laws that understand their context, ensure their rights and address their needs, and place them in a position to push for the law’s enforcement.<sup>9</sup>

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<sup>4</sup> Atty. Glenda T. Litong. *The Way Forward: a Policy Resource Book on legal Empowerment of the Poor in the Philippines – Thematic Paper 1: Reducing Poverty and Ensuring Access to Justice through Legal Empowerment of the Poor*. ESCR Asia. 2008. p.52.

<sup>5</sup> Maria Socorro I., Diokno. *Human Rights Centered Development: Theory and Practice*. 2002. p. 125

<sup>6</sup> Institute of Human Rights, 2005. *A Democratic Audit of the Rule of Law and Access to Justice in the Philippines*. Written and presented by the Institute of Human Rights at the Philippines Social Science Center and PROCESS Democratic Audit Series, September 22, 2005. Unpublished paper..

<sup>7</sup> *Rights-Based Development.; Training Manual*. UNDP. 2002. p.36.

<sup>8</sup> *Ibid*.

<sup>9</sup> Atty. Glenda T. Litong. *The Way Forward: a Policy Resource Book on legal Empowerment of the Poor in the Philippines – Thematic Paper 1: Reducing Poverty and Ensuring Access to Justice through Legal Empowerment of the Poor*. ESCR Asia. 2008. p.p. 55.

On the basis of these rights-based definitions of the three concepts, the paper ventured into an analysis as to “How access to justice and rule of law respond to legal exclusion, marginalization and vulnerabilities of the poor so that legal empowerment of the poor may be achieved to reduce poverty?”

On the matter of presenting the barriers of legal empowerment of the poor in the Philippines, the paper deliberately or non- deliberately achieved a rights-based analysis befitting of a HRBA from the perspective of the capacities of both the duty-bearers referring to government and claimholders referring to the poor.

On the other hand, the capacities of the poor, vulnerable and marginalized are viewed differently under the purview of legal empowerment, which is taken in the context of their economic and social status in the Philippine society. Under poverty condition, these groups referred to as the claimholders in human rights parlance, are in no position to bargain or assert for their rights, thus the issue of equity in the context of access to justice. These claimholders continue to perceive the law as mainly for the rich and have likewise, expressed general distrust for the justice system. Hence the genuine perspective of the poor with respect to access to justice and rule of law include divergent concerns such as: lack of access to legal education by the poor and marginalized; lack of information on the part of the judges and other administrators of the justice system about the issues concerning the poor and marginalized and the specialized laws governing them; lack of adequate representation before the courts and the tribunals due to the lack of lawyers that handle their cases; lack of support mechanisms for the poor and members of the marginalized groups who are involved in cases; issuance and implementation of anti-poor policies and decisions; general discrimination against the poor and marginalized groups within the judiciary and justice system; structural and systemic problem within the judiciary and justice system that impede access to justice by the poor; gender insensitivity and bias of the courts and other government offices involved in the administration of justice; and inadequacies in structure and processes of the barangay justice system particularly the needed sensitivity and understanding of women’s context and gender. In this respect, the paper also surfaced the vulnerable identities of women, indigenous peoples.

The HRBA puts the poor, marginalized, vulnerable groups at the core of policy and the focus of capacity development strategies through a process that addresses human rights problems to the roots. This was achieved in terms of how the paper treated the issue of the Philippine informal Sector. The paper analyzes the current legal and regulatory framework of the informal sector to include: laws affecting the vulnerabilities in the informal sector particularly, women, children and indigenous peoples; laws governing sub-groups of the informal sector such as farmers and fisher-folks, small businesses and vendors, small transport; and other laws such as the labor code, social development and protection available to the informal sector.

Using the HRBA framework the paper has effectively built a case for the Philippine informal sector as the primary target for legal empowerment in the country.

Using the rights perspective, development can only be truly empowering if the human person is the central subject, active participant, owner director and beneficiary of development.<sup>10</sup> In this regard the paper finally posited its general observation that poverty denies the poor the status or personality before the law particularly in the case of the informal sector. The grant of legal personality to the poor is dependent on the recognition of the law of their existence and contribution as subject and objects of development.

Finally, the paper considers some rights-based strategies under the legal empowerment framework. To legally empower the poor, a legislation framework has been considered to bring about real change in the lives of the Philippine Informal Sector. The legislation is expected to define the informal sector in context, causes of disempowerment and the rights of the informal sector with appropriate redress mechanisms. Its principles carry the fundamental principles of human rights. As described by the paper the legislation must spell out a holistic, integrated, comprehensive, non-discriminatory, and participatory and bottom up approach to addressing poverty in the context of the informal sector.

### ***Box 2 -Property Rights of Informal Sector***

*Property rights were elucidated in the case in the light of the status of its enjoyment by vulnerable and disadvantaged groups like the peasantry, indigenous peoples, urban poor, fisher-folks, poor women and informal workers.*

*As established under the legal nature of rights, properties are things over which a person or group of persons (or some juridical entity) has exclusive right. The case expanded this statement using the human rights perspective as “someone who has property rights, is referred to as a right holder – an element in the application of the HRBA.*

*In the context of legal empowerment of the poor, the agenda of property rights point to the capacities of these vulnerable groups to claim and exercise their rights fully and responsibly. The paper cited the importance of those vulnerable groups knowing of such property rights, who are often unaware of the rights that protect them, and therefore vulnerable to abuses and exploitation*

It should surface the issues of inequity, inequality and unjust distribution of wealth and resources, as well as the factors that discriminate and emasculate the poor.<sup>11</sup> As further proposed for the road map, it is guided by the legal empowerment approach, which fundamentally carries the elements of the HRBA like the bottom up approach, the duty-bearer and claimholder analysis involving both government institutions and civil society organizations and consideration of national and international cooperation, which is a parameter towards achieving the right to development. These elements are embedded into the strategic steps proposed by the paper to include: role enhancement of other actors of development; listening to the

<sup>10</sup> *Rights-Based Development.; Training Manual. UNDP. 2002. p.14.*

<sup>11</sup> *Atty. Glenda T. Litong. The Way Forward: a Policy Resource Book on legal Empowerment of the Poor in the Philippines – Thematic Paper 1: Reducing Poverty and Ensuring Access to Justice through Legal Empowerment of the Poor. ESCR Asia. 2008. p102.*

voices of the poor, especially women; expanding the justice sector; public and civil society partnership; and adoption of indigenous and culturally based and appropriate interventions.

b) . Property Rights<sup>12</sup>

Property rights were elucidated in the light of the status of its enjoyment by vulnerable and disadvantaged groups like the peasantry, indigenous peoples, urban poor, fisher-folks, poor women and informal workers. As established under the legal nature of rights, properties are things over which a person or group of persons (or some juridical entity) has exclusive right. The paper expanded this statement using the human rights perspective as “someone who has property rights is referred to as a right holder – an element in the application of the HRBA. In the context of legal empowerment of the poor, the agenda of property rights point to the capacities of these vulnerable groups to claim and exercise their rights fully and responsibly. The paper cited the importance of those vulnerable groups knowing of such property rights, who are often unaware of the rights that protect them, and therefore vulnerable to abuses and exploitation

Under this thematic paper, the strengthening of the property right of the poor was given focus. The treatment of property right under this section was taken in the context of the situation of vulnerable and marginal groups, which is very much in keeping with one of the human rights principle of *Attention to Vulnerable Groups*. These groups are those who experience obstacles in the realization of human rights. They were mentioned as the special targets for strengthening property rights.

. As may be deduced from the paper, the capacity of these vulnerable groups to assert property rights is dependent on their capacities to articulate their claims on these property rights. However due to social exclusion, these poor vulnerable groups are often at a disadvantage with respect to collective action that could help them capacitate themselves.

As posited by the paper, there were legal measures adopted for the past twenty years like the Comprehensive Agrarian Reform Law of 1988, indigenous peoples Rights Act of 1997, and community mortgage program in 1987, among others, but these were proven insufficient to ensure the property rights of the poor. As claimed by the paper, much is yet to be desired in terms of the effective implementation of these measures to include the resolution of existing conflicts of laws like the case of the IPRA and Mining Act.

Thus, the role of the state in instituting policy reforms and enforcement of such laws and reforms that will strengthen the property rights of the poor was emphasized in equal importance with self-help efforts or a combination of the two. More defined duties and obligations of the state as the duty-bearer, also an element of the practice of HRBA, were identified in terms of policy reforms and effective program implementation. Policy reforms include: resolution of the conflict of, enactment of additional or remedial

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<sup>12</sup> Dr. Amado Mendoza Jr. *The Way Forward: a Policy Resource Book on legal Empowerment of the Poor in the Philippines. Thematic paper 2 – Property Rights and legal Empowerment of the Poor in the Philippines.* pp 123-174.

legislation, transformation of inferior or junior policy such as executive orders into full-blooded laws and the complete translation of national policy and laws into implementing rules and regulations, administrative orders and the adoption of appropriate ordinances at the local government levels from the village level, up to the province and autonomous regions. Effective program implementation calls for assured funding for crucial programs, simplification of registration and titling processes and harmonization of multi-agency programs and procedures.

c) Labor Rights<sup>13</sup>

This thematic paper ventured into an in-depth analysis and assessment of the conditions of the informal sector from a rights perspective. Consistent with the human rights standards postulated under Article 7 on the right of everyone to the enjoyment of just and favorable conditions of work, as well as, the related provisions of Article 9 on social security to include social insurance, the paper presented the prevailing concerns of the informal sector that were drawn from different levels of consultation. The human rights principle of providing attention to vulnerable sectors was applied to the informal sector in view of these concerns of the sector: absence of government recognition, limited and voluntary social protection, uncertain tenurial status and uncertain safety in the workplace. The paper offered a very detailed and comprehensive understanding of the informal sector in terms of their labors rights and social protection, which differed among the sub-classifications as follows: geography, premises, gender, vulnerability, industry, and occupation, nature of employment and nature of means. However, across these sub-classifications, core issues directly affecting the informal sector as a whole were identified indicating the level of the sector's vulnerability. These are:

- Institutional inconsistency in recognizing the existence and rights of the informal sector workers being mainly outside of the purview of the country's legal framework, jurisprudence on the informal sector has remained sparse and inadequate in recognizing the inherent labor rights of the informal sector workers;
- Inadequacy of the prevailing working understanding of the phenomena of the informal labor, being labeled as informal somehow means being outside of the mainstream economic activities, even if such activities are not outside the bounds of the law; and
- Inadequacy of some poverty alleviation strategies, requiring the need for strategies to shift its focus from merely alleviating the pain and despair of poverty to actually searching easy and means to reduce incidence of poverty by providing opportunities for poor families to escape the clutches of poverty.

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<sup>13</sup> Atty. Edmund T Lao and Mr. Jeremy Inocian. *The Way Forward: a Policy Resource Book on legal Empowerment of the Poor in the Philippines. Thematic Paper 3 – Towards Fulfilling The Constitutional Mandate of Social Justice and Human Rights in the Informal Sector.* 175-260.

### ***Box 3 -Labor Rights of the Informal Sector***

*A rights-based view was also used to assess the level of application of labor rights, labor standards and social protection to the informal sector. Specifically, the provisions of the Philippine Labor Code do not apply equally to Filipino workers. The application of the law varies from full application, limited application or to none at all as follows:*

*Subsistence employees can enjoy only a limited application of the labor code because while theoretically they can avail of rights guaranteed under the code, they cannot effectively claim and assert their rights owing to their depressed, limited, temporary situation and the nature of their jobs;*

*Own Account/Self employed informal sector can also enjoy limited application of training for overseas employment, health and safety laws, right to unions and strike. The rest of the other labor standards are not applicable to them.*

The paper has made reference to Litong et al (2002), for its rights-based view that “having ratified all pertinent international instruments relating to the right to work and the rights at work, the Philippines has the obligation to enhance domestic legislation, which would not only respect, promote and protect but also facilitate and fulfill these rights, both in favor of formal and informal labor.”

As a result of the assessment made on the conditions of the informal sector and as a result of the highly participatory consultations conducted, rights-based direction

and intervention were formulated as follows:

- Enhance the rights of labor of wage informal employee through vigorous and creative enforcement of existing labor rights and social protection and creating the conditions for compliance; and
- Enhance the rights of labor of the Own Account/Self Employed Informal Employee through vigorous and creative enforcement of rights and creation of conditions for compliance as well as providing greater and expanded labor rights and social protection, to include labor relations, self organization, participation in policy making bodies and security of tenure.

Finally, the paper calls for the bridging of the gap between formal and informal labor, not necessarily under the Philippine Labor Code that poses legal barriers to the informal sector. Social justice and human rights are the more apt approach to effectively strengthen the rights of the informal sector to labor and social protection. Overall, the paper proposed a multi-level process of consultation process involving government, private sector and civil society to address the policy issues and program implementation concerns of the informal sector for the crafting of various legislative, administrative and other related measures to include a road mapping for the comprehensive approach to strengthening the rights of informal sector and enhancing their technical and entrepreneurial capacities. On the other hand institution capacity building, microfinance services and funding support system at various hierarchical levels of government from the local to the national level should be pursued.



#### d) Business Rights

Legal mechanisms to empower informal businesses<sup>14</sup> were also examined. Through consultations at the national and local levels, the policy paper opened for public discourse the policies, programs and services of the government, which it refers to as the duty-holder<sup>15</sup>. Rights-based objectives were formulated in line with the empowering of this informal sector to that of: ensuring higher and equitable individual income and social protection for informal economic workers; and improving and sustaining informal businesses' productive and employment generation capabilities.

##### **Box 4 -Business Rights of the Informal Sector**

*The paper points to significant policies, programs and services for informal business especially relating to microfinance as a development tool for the poor, to include both the regulated/licensed and unregulated/unlicensed.*

*However as one of the issue raised, the impact of all the policies, programs and services seems to have been fairly limited to growth oriented informal businesses, which demands more response from the government, as duty holder. As Article 2, par. 1 of Part II of the ICESCR stipulates "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."*

*Challenges were identified in the areas of: expanding the business of livelihood and small growth informal enterprises; expanding and deepening the role of LGUs; recognizing the need for greater informal business participation; and sustaining the growth of the microfinance sector.*

These objectives are in keeping with Article 6 par. 2 of the ICESCR, which postulates that the steps to be taken by a State Party to the present Covenant to achieve the full realization of the right to work shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. Also, these objectives operationalized the intent of the United Nations Declaration on the Right to Development which stipulates that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of

the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from,

<sup>14</sup> Reginald Indon. . The Way Forward: a Policy Resource Book on legal Empowerment of the Poor in the Philippines. Thematic Paper 4 – Legal Mechanisms to Empower Informal Businesses. pp.261-315

<sup>15</sup> Ibid. p 275

All these challenges point to improving the access of informal business to productive assets and resources towards helping informal sector attain sustainable livelihood. Resulting from research and consultations, there are legal mechanisms to protect informal businesses but there is a need to effect good governance for the entrepreneurial poor to effectively access mainstream resources and services. Thus, to effect good governance, the government most especially the local government units (LGUs), as duty-holders must seriously address the specific needs and requirements of informal businesses and integrate them into the local project planning, implementation, monitoring and evaluation. When properly integrated, the entrepreneurial poor would contribute significantly to poverty alleviation and advancement of the quality of life of the informal sector. As observed the paper has successfully generated public discourses that were focused on the entrepreneurial poor, as the claimholder.

## 2. Human Rights Content Analysis of the Draft Magna Carta

As an offshoot of the project output, the proponent ventured into the formulation of the Magna Carta for Informal Sector, which was not originally identified as a deliverable of the project. The proposed Magna Carta, which emanated from the results and outcomes of the project, is essentially rights-based described.

The Declaration of Policy of the proposed law bears the fundamental principles of a Human Rights-Based Approach as follows: universality, non-discrimination, equality, indivisibility, interdependence, accountability and participation, rule of law and progressive realization. Taken from the draft, the proposed law has the following declaration of policy, which substantively highlight the principles of a Human Rights-Based Approach (in bold and italicized phrases):

- a) To promote and improve the total well-being of the *poorest-of-the-poor and the marginalized low level income earners* who engage in economic activities under the informal sector;
- b) To nurture and protect the interests of the informal sector by providing them with *adequate and timely social, economic and legal services*, as well as mechanisms that shall protect their rights and promote benefits that ensure their dignified existence and economic advancement;
- c) To recognize, promote, protect and fulfill the rights of every worker in the informal sector including the *right to self-organization, the right to decent work, just and humane working conditions, access to social protection, the right to represent their organizations in a continuing process of consultation and dialogue* towards maximizing the provision of a comprehensive package of reforms, interventions, and services in accordance with their articulated needs and interests;

- d) To recognize the *roles and contributions of workers* in the informal sector and make them visible in the national and local statistics;
- e) To develop and enhance their entrepreneurial skills and capabilities so that they can become *more productive and self-reliant citizens thereby ensuring participation in mainstream economic activities*;
- f) To promote gender equality and protect women workers in the informal sector against *gender-based discrimination, exploitation and abuse*;
- g) To advance the women workers' social, political and reproductive rights and provide access to *social protection and participation in decision-making bodies*;
- h) To *protect vulnerable groups* in the informal sector such as children, elderly, differently-abled persons and indigenous people from discrimination, exploitation, abuse and harassment;
- i) To *progressively eliminate child labor* in the informal sector through the creation of more quality jobs for adults, effective enforcement of laws against child labor, improved access to universal education and elimination of cultural factors that tolerate child labor.

If passed the proposed legislation will be able to fulfill the operationalization of this state obligation as exemplified in the following enumeration: (those in bold and italicized fonts reflect the desired intervention of the state):

- a) Putting in place *policies and programs* that will bring marginalized workers and economic units into economic and social mainstream.
- b) Pursuing *structural reforms in all relevant levels of government* by creating committees, special offices for development and protection of workers in the informal sector and supporting their representational rights through their organizations.
- c) Extending coverage of *accessible and affordable social security and health care benefits* to workers in the informal sector.
- d) Implementing *minimum and simplified regulation* to encourage the development of ingenuity and entrepreneurial spirit among workers in the informal sector.
- e) Encouraging the organization, establishment, strengthening and expansion of the various business activities or enterprises under the informal sector *in the barangay level preferably unified under a municipality, provincial, regional and national federation/association*.

The Coverage of the proposed law highlights preference over the vulnerable group, which is a basic principle of a Human Rights-Based Approach. Using the approach, ESCR Asia successfully identified the most vulnerable among the informal sector. The coverage is inclusive of all the sub-sectors and groups under the informal sector who experience major obstacles, which is a criterion for achieving effectiveness of any development program. These vulnerable groups include the following:

Micro-entrepreneurs: (i) vendors, whether with stalls or without including ambulant vendors, street vendors or those plying their goods and trades in streets and those engaged in sari-sari stores which conform with the total asset value requirements as mentioned in Section 4 (f) of this Act; (ii) marginalized farmers; (iii) marginalized fisher folks; (iv) home-based workers who are independent producers of goods or services and whose total asset value conforms with that mentioned in Section 4 (f) of this Act; (v) small transport such as but not limited to non-corporate operators of small marine boat or vessel for transport, tricycle, pedicab, *habal-habal*, *calesa*, *kuliglig* or “trolley” whose total asset value conform with the requirement as mentioned in Section 4 (f) of this Act.

Contracted/Self-Employed: (i) on call domestic workers; (ii) barbers, manicurists or pedicurists; (iii) drivers of tricycle, pedicab, *habal-habal*, *kalesa*, *kuliglig*, “trolley” or small marine vessel/boat; (iv) “barkers”, fare collectors, dispatchers and other workers who share in the income of the non-corporate operators; (v) welders and mechanics; (vi) non-corporate constructions workers such as but not limited to carpenters, plumbers, electrician, mason or house painters; (vii) television, radio and air-condition technicians.

The section of the proposed law on *Special Allocations for Development Initiatives* is an indication of the progressive realization of economic, social and cultural rights of the informal sector. The annual allocation of funds for development initiatives for the informal sector will ensure continual progress of the realization of the rights and freedoms of the informal sector.

***Box 4 -Right Orientation of the Draft Magna Carta for Informal Sector***

*The Framework and Principles bears statement and commitments on the following steps to be undertaken by the country as a state party to its obligations under the International Covenant on Economic, social and Cultural Rights.*

*More pronounced under this item of the proposed law is the requirement under the Declaration on the Right to Development, which provides that States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights; and that States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.<sup>1</sup>*

As proposed, the national government shall allocate at least ten (10%) percent of its annual national budget to be appropriated proportionately in accordance with the corresponding internal revenue allocation (IRA) of respective local government units (LGUs). Such allocation shall be annually added to the current IRA of LGUs. For this purpose, the Commission on Audit (COA) shall establish an Informal Sector Development Fund in every municipality and city for their supervision and management subject to accounting and auditing procedures.

The Creation of *an Informal Sector Development Council* under the proposed law will provide the sustainability of the development initiatives for the informal sector. This will serve as the implementing mechanism through which policies, programs to improve the conditions of the informal sector could be maintained as well as the monitoring and evaluation thereof.

The foundation for the integration of the informal sector and its mainstreaming into the national life will be guaranteed by the establishment and development of a centralized and sex-disaggregated database system to effectively guide policy formulation relative to the Informal Sector workers. This will guarantee the observance of the principles of a rights-based approach such as equity, non-discrimination, participation and empowerment. The databank shall be available for public use and shall include but not limited to the following:

- a) .Master list of workers in the informal sector classified according to geography (urban or rural based), premises (home based or non home based), gender (male, female), vulnerability (children, elderly or person with disability), industry (industrial, commercial, services or agricultural), occupation (fisher folks, farmers, construction, drivers, vendors, laborers or sales personnel), nature of employment (casual, contractual, seasonal, permanent/regular or pakyaw/commission basis/boundary system) and roles/functions (own-account/self-employed or subsistence/marginal employment);
- b) List of government and non-governmental organizations which provide educational, socio-economic and legal services to the Informal Sector;
- c) Sex-disaggregated statistical profile of various Informal Sector workers based on age, location, type of work, average monthly income, number of hours worked, and other statistical information;
- d) Statistical data on informal enterprises, including capitalization and sources of capital, number and status of workers, average income;
- e) Database of the needs and problems of women and children in the Informal Sector nationwide; and

- f) Compilation of existing laws and programs affecting the interest and welfare of the Informal Sector.

## 2. Human rights content analysis of the project process

Again, through the operationalization of the HRBA, the case was able to draw out very specific indicators, which came about as a result of the project process, as follows:

### **Box 5 -Human Rights Principles Operationalized in the Project Process**

*The vulnerable sectors among the informal sectors participated actively in assessing the conditions of the sector, review of proposed policy papers, drafting of the Magna Carta, which fleshed out their development needs and poverty conditions vis-a-vis the rights pertaining to their access to justice, property rights, social justice and human rights and access to legal mechanisms.*

*Accountabilities among the participating government agencies were exacted in the identification and designing of policy measures and in the validation of these measures across the country.*

*The empowerment principle both as a social and legal empowering process of engaging participatory and bottom up approach to addressing issues of poverty and powerless in the sector was also evident. It surfaced the issues on disempowerment such as inequity, inequality and unjust distribution of wealth and resources, as well as the factors that discriminate and emasculate the poor.<sup>1</sup>*

1. The degree to which human rights principles and standards have been applied in the content of the outputs particularly in defining the rights that the legal poor must be able to secure through the Magna Carta and through the four (4) thematic policy papers.

2. The degree to which the claimholders were involved in the project especially in expressing their views, opinions and contributions to the decision making on the contents of the policy outputs; demonstrating the exercise of an empowering participation in the process; and

3. The degree to which the relevant State Obligations contained in the pertinent international treaty and domestic laws are expressly

incorporated into the policy outputs on the informal sector.

## 7. Project proponents' User Satisfaction on the HRBA

The proponent found the application of the HRBA easy because, first, it is intrinsic or an inherent mandate of a human rights organization like ESCR-Asia. Second, the understanding of what HRBA is a lot easier to an HR entity than to an NGO or any entity not having the rights mandate.

As expressed by the proponent, the HRBA is also an 'expensive' approach. Employing the "bottom-up" approach, ensuring participation, gender balance, non-discrimination, etc. does not only require skill, time but also resources. An example, one component of LEP Phase 2 was also the drafting of a rights-inspired Magna Carta for members of the informal sector. ESCR-Asia has to do an island-hopping consultation to

ensure that the cultural nuances in drafting the proposed bill will be considered. Realities and needs of informal sector members coming from Luzon are different to those from Mindanao and the Visayas. Authentic HRBA requires ‘fidelity’ to the understanding that one cannot “shortcut” a process to be able to get the desired result. As the proponent claimed *“no NGO, even if its mandate is rights-motivated cannot claim monopoly to the correctness of the application of HRBA.”* The desired outputs and results of the plan are best indicators if the HRBA has been faithfully implemented.

As noted by the proponent, the added-value is in ensuring that the planning is validated from the ground; that the plan garnered the affirmation of the field partners; that it took into great consideration to the real needs of the constituencies, thus creating confidence in the work implementation. LEP Phase 2 was a continuation of Phase One and merited the consultation of various informal sector groups. LEP Phase 3 project components were presented to the partners including getting their critique. It is easy to plan themes but emanating it from the partners/constituents is difficult. HRBA also builds mutual goodwill among the funder-donor, the implementor and the field partners. On hindsight, the HRBA also unleashes a principle in the Right to Development Declaration that: *“That the human person is the subject, participant and beneficiary of development.”*

Based on the experience of the proponent, the following can be considered in ensuring effective use of HRBA: process documentation; faithful employment of at least the following principles: participation, gender balance, non-discrimination, budget allocation for validation, at least two-island consultation if project is nationwide; translation to Filipino or the equivalent language any English-driven/dominated project; and an orientation of what HRBA mean specially to the team implementing a project

## **8. Lessons Learned from the Application of the HRBA**

While the mainstreaming process was highly predictable in terms of being able to generate human rights oriented process, outputs and outcomes in the project, HRBA proved to be very useful. The different stakeholders both duty-bearers and claimholders found ease in applying human rights standards as enunciated in the ICESCR. Under traditional process of purely invoking the relevant human rights treaties simply did not work as such process only proved to be an imposition. The HRBA was a more creative and innovative way of raising the level of awareness of both the duty-bearers and claimholders in the process.

- a. HRBA to legal empowerment of the poor is an inclusive and expansive process.

Since the informal sector is continuously sprouting and growing as a consequence of economic disparities in the Philippine society, the proponent found it extremely challenging to reach out to the larger cross-section of the sector. As the HRBA typifies, the approach should allow for a bottom up and top bottom process that would allow interaction between the duty-bearers and claimholders. In addition, the lateral interaction

across sectors proved to be equally challenging as attempts to cover the greatest number of the sub-sectors of the informal group through local and group representations proved to be inclusive. But much is yet to be desired, as time and resources proved to be scarce to cover as much areas where the informal sectors are.

b. Creative use of Information and Education Materials

Communicating the rights of the informal sector is by itself a great challenge. Considering the divergence of the informal sector, the proponent had to be extra creative in their approach to consultation. Simplified literature in the form of popular information materials had to be produced despite constraints in resources in order to effectively communicate the rights and concerns of the informal sector in a language and form that would be understandable to them.

c. Social and Policy Dialogues for both duty-bearers and claimholders

Mobilizing the support of both claimholders and duty-bearers to the cause of the informal sector through the thematic policy papers and the Magna Carta proved to be a greater challenge. The cooperative effort of various government and non-government organizations, as well as, the academe worked together in the mobilizing particularly of the representative claimholders among the informal sector.

Overall, the process of mainstreaming human rights as enunciated in the conceptual framework and operational definition of HRBA effectively worked in this case. International human rights framework was mainstreamed into the national initiative for legal empowerment of the poor. This was made possible through the use of informative materials and other key mainstreaming interventions like dialogues, consultations and training. The results of the mainstreaming process look promising with the rights-based Magna Carta for the Informal Sector, which is now being pushed by different stakeholders, both duty-bearers and claimholders.

## **9. Conclusion, Future Direction and Replicability**

This is one way of operationalizing HRBA, which is less structured. What makes it HRBA are the basic orientation and processes of the proponent, which is basically a human rights organization. The framework, designs, processes, materials and tools they used have basic HRBA orientation, which made it easy for them to effectuate the approach in this policy reform for the legal empowerment of the informal sector.

a) Strengthening HRBA Practice



Therefore, the application of the HRBA came about naturally, as every step taken by the proponent deliberately involved human rights champions and advocates. However, while the outputs produced by this project case are heavily rights-based, there is much yet to be done to institutionalize the HRBA process of the ESCR, Asia not only for its use but for the benefit of those who wish to learn from their experience. In order to improve the practice of HRBA by the ESCR, Asia, there is a need to enhance the documentation of their processes and tools.

b) Replicability

Definitely, with proper documentation, the project's application is highly replicable. This will contribute much to the practice of national legislation or local policy making where both the duty-bearers and claimholders would be heavily engaged in the substantive issues and concerns that affect the concerned sector using human rights perspective, process and tools. This experience of the ESCR, Asia is tremendously engaging, which has shown high commitment and passion for the advancement of the human rights of the informal sector.

**10. Implications in Development and Governance**

Overall, HRBA as illustrated by this project case, looks promising in terms of providing a model of human rights mainstreaming both in development and governance. Specifically, HRBA offers to both discipline its pragmatic framework, and process of applying human rights as criteria and guide in pursuing certain development objectives for vulnerable sectors like the informal sector. It suggests also, a very concrete way of transforming the orientation and perspective of governance actors in the context of human rights, as they are made more sensitive and perceptive of their respective obligations, responsibilities and entitlements that may effectively enhance development and governance goals. The initiative may not originate from the government. The initiative may come from the civil society as exemplified in this case. Meaning, any one of the governance actors who have the preparedness and readiness to do HRBA to respond to the situation or condition of the vulnerable sectors, may do the proper initiation to engage other actors in a rights-based approach to implementing viable development or governance interventions for the vulnerable sectors.

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### **Definition of Human Rights Terms**

The following definition of terms is adopted from the International Human Rights Framework and used for purposes of the study. Any and all references made to the use of the following terms in the study would be based on the explanation provided below:

1. Human Rights –UNDP in its Human Development Report in 1990 defined human rights as the supreme, inherent and inalienable rights to life, to dignity and to self-development. It is the essence of these that makes man human.<sup>16</sup> There are two sets of rights namely: civil and political rights and economic, social and cultural rights. There is no such thing as prioritization or hierarchy of rights based on the human rights principles that human rights are universal, indivisible and interrelated.

2. Human Development – UNDP in its 2001 Report explains that human development is the expanding choices for all people in the society, wherein men and women, particularly the poor and the vulnerable, are at the center of the development process. It also means the protection of the life opportunities for future generations... and ... the natural systems on which all life depends, thus creating an enabling environment in which all can enjoy long, healthy and creative lives.<sup>17</sup> This has been the concern of every society considering the persistence of global poverty and powerlessness, wherein achievements of societies with regard to basic human rights indicators or indexes are relatively low in developing countries.

3. Development – As enunciated in Article 1 of the UN Declaration on the Right to Development, development is a comprehensive economic, social, cultural and political process aimed at the constant improvement of the self-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the resulting benefits.<sup>18</sup> Over the past many decades, there had been continuous search into how development can be approached and achieved both as a process and an end, as well as the priorities that societies should look upon to make development benefits distributive and equitable. This is one priority agenda in the Philippines in relation to the human rights conditions of the vulnerable and disadvantaged sectors of the country.

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<sup>16</sup> *Human Development Report, UNDP, 1996*

<sup>17</sup> *UNDP Report, 2001*

<sup>18</sup> *Art. 1, Declaration on the Right to Development*

4. Human Rights Principles – According to Aurora Parong in her article on Principles and practices of Human Rights, the principles of human rights are embodied in international human rights laws such as the International Bill of Human Rights as well as other human rights declarations.<sup>19</sup> These principles are essential conditions to facilitate the definite enjoyment of rights and these principles originated from human rights norms. These human rights principles are universality, non-discrimination and equality, attention to vulnerable groups, equity, indivisibility, interdependence and interrelatedness, accountability, people's participation, empowerment, good governance, independence of the Judiciary, legislative capacity and transparency.<sup>20</sup> These principles work in various ways but basically serve as criteria of processes of achieving human development. Some of these principles are similarly viewed as a helpful guide in capacitating the different governance stakeholders particularly the principles of accountability, transparency and rule of law. These human rights principles are regarded as one of the core elements of HRBA.

5. National and International Framework – As explained in the UNDP Training Manual on the Rights-Based Development Training Manual issued in 2002, human rights are standards of human dignity rooted in every culture, religion and tradition throughout the world. Their inclusion in the UN Charter means human rights are no longer exclusively within the domestic jurisdiction of states but they are legitimate concerns of the international community.<sup>21</sup> It also, consists of international human rights law consisting of customary law (including non-binding declarations and general comments, etc.) and treaties and the national framework as the Constitution and domestic laws.

6. Human Rights Instruments – As described in the same UNDP manual, it says that human rights instruments refer to two types: Human Rights Treaties also known as conventions or covenants; and UN Standards also known as UN Principles, Rules and Declarations.<sup>22</sup> These are instruments that address the status and level of enjoyment of rights of people in different societies, incorporating therein the universal response and standards of human rights observance.

7. Human Rights Treaties – Based on the International Human Rights Framework, the idea that human rights should be enjoyed by every human being goes back to man's beginnings. But the protection and promotion under international law

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<sup>19</sup> \_\_\_ Source Book on Human Rights. National College of Public Administration and Governance (UP-NCPAG) and Commission on Human Rights of the Philippines (CHRP). 2006. pp.12-13.

<sup>20</sup> *A Training Manual on Human Rights-Based Approach: Module II, Section 1, 2002*

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*



those human rights are still in infancy compared to the system of government. It is thus the intention of the international treaties to narrow the existing gaps between human rights aspirations and reality to ensure that each human being is accorded the dignity he is entitled to.<sup>23</sup> Thus, as defined these treaties also known as conventions or covenant are formal legal texts to which states become parties and which create binding legal obligations. The following are seven fundamental human rights treaties ratified by the Philippines: International Convention on the Elimination of All Forms of Racial Discrimination (CERD); International Covenant on Civil, Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment for Punishment (CAT); Convention on the Rights of the Child (CRC); and Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC).<sup>24</sup> Each of these treaties have monitoring bodies serving as the oversight for the status of implementation of the treaties in different societies especially the UN member signatories, which carry human rights state obligations having signed the treaties. The various treaty bodies deliberate on the different country reports. Consideration of the country reports are followed by the issuance of concluding comments and observations.

8. UN Standards – The UNDP Training Manual of 2002 defined UN Standards as UN Principles, Rules or Declarations that are passed by resolutions of a UN body, which is usually the General Assembly. Examples of UN Standards are the Universal Declaration on Human Rights and UN Declaration on the Right to Development.<sup>25</sup> These are often negotiated over a period of time to which all members of the UN participate. These standards are arrived at by consensus of the UN members.

9. Normative Content of Human Rights – In the same manual, normative content of rights is defined as the specific standards protected by such right or its actual meaning that can be used as objective standards of human dignity in the development process. These standards become important guides to be used in the dynamic process such as development because the normative content of human rights includes guidance for immediate and progressive realization.<sup>26</sup> These human rights and their normative bases are contained in the treaties, general comments and even, in periodic treaty concluding observations issued by treaty bodies. The application of human rights standards is another core element of the HRBA practice.

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<sup>23</sup> CHRP. Principles and Concepts of Human Rights. Source Book on Human Rights. UP-NCPAG and CHRP. 2006. pp39-546.

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

12 *Ibid*.

10. State Obligations – Maria Socorro I. Diokno in her article published in the CHRP-UP\_NCPAG Source Book on Human Rights in 2006 explained the different levels of state obligations.<sup>27</sup> Originating from international human rights framework that requires a particular conduct now (immediately and also the attainment of certain results over time (progressively)). Emphasis is given to the fact that human rights always imply human duties and responsibilities and most of these duties or obligations lay on the state because the State's political, economic and military power over its citizen is both the major threat to human rights and also its major guarantee and protection. State obligations are founded in the very text of the treaties. The concept of State Obligation is herein applied in the study as another core element of HRBA, as basis for establishing accountabilities at different stages and aspects of development or governance.

11. Human Rights-Based Approach (HRBA) – UNDP in its 1995 report on Human Reports in Development described HRBA as a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights applying the integration of the norms, standards and principles of the international human rights system into the plans, policies and processes of development.<sup>28</sup> This is popularly referred to as the mainstreaming of human rights either in development or governance, either on a national scope of development programming or mainstreaming in the context of project development. There is no single approach to HRBA only core elements that make up its practice or operationalization.

12. Mainstreaming - As defined by Christopher Mc Crudden, mainstreaming means reorganization, improvement, development and evaluation of processes so that human rights perspective is incorporated by actors into policies and measures at all stages. Further, he explains that mainstreaming as contrasted with mere compliance, is intended to be anticipatory rather than remedial and to be extremely participatory in defining issue and how it might be addressed. As may be deduced from this definition, mainstreaming aims to complement and support compliance but does not supplant it.<sup>29</sup> Taken from this definition, mainstreaming is the process of incorporating human rights principles and standards and other concepts and practices of human rights into development and governance interventions more popularly known as Human Rights-Based Approach (HRBA).

13. Right to Development – As defined in the 1995 UN Declaration on the Right to Development, right to development is an alienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and

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<sup>27</sup> Maria Socorro I. Diokno. State Obligations on Human Rights. Source Book on Human Rights. UP-NCPAG-CHRP.. 2006. pp. 48-53

<sup>28</sup> *Human Rights in Development. UNDP. 1995.*

<sup>29</sup> Edited by Colin Harvey, Human Rights in the Community: Rights as Agents for Change. Beritish Institute of Human Rights. Hart Publishing Oxford and Portland Oregon. 2003. pp 14-15.

fundamental freedoms can be fully realized.<sup>30</sup> The right to development is founded in the Declaration of the Right to Development of 1985, which is the sound basis and framework for human rights-based approach to development. This declaration is used as the framework for the practice of HRBA to Development.

14. Development Projects – For purposes of this study, development projects refer to time bound interventions to effect changes in the condition and quality of life of the people. In the context of this study, these are implemented to produce development outputs, which may contribute directly or indirectly in the attainment of development outcomes.

15. Governance Projects – Also in the context of this study, these are time bound interventions to effect changes in the capacities of governance stakeholders. These are projects that respond to enabling the governance stakeholders to overcome weaknesses and constraints towards achieving more effective performance of mandates. Under this study, governance projects focus on the capacity building of both the duty-bearers and claimholders of rights.

16. Duty-Bearers – As discussed in the 2002 UNDP Training Manual, these are governance actors that have responsibilities in the realization of rights.<sup>31</sup> In the traditional and legal approach based on the treaties, the state is often assumed to be the duty-bearer. There is a consideration that private sector or business is a non-state duty-bearer. For purposes of the HRBA, this concept of duty –bearer is loosely applied to mean all those who have the responsibility and the mandate to respond or assist in the securing of human rights entitlements for the claimholders. For the most part of this study, duty-bearers refer to government agencies.

17. Claimholders – In the same manual, claimholders are referred to as governance actors that have claim or entitlement over the rights being secured. Under the HRBA, they may refer to people's organizations, basic sectors or any organization of vulnerable and disadvantaged sectors that are often unaware of their rights and how to claim them. It is assumed also that while they may have claim over human rights entitlements, they also, perform certain responsibilities in seeking the well-being, justice and equity for all, relative to individual obligations are concerned.<sup>32</sup>

17. GOP-UNDP Governance Portfolio is the joint cooperation program of the Government of the Philippines and the United Nations Development Programme (UNDP). The GOP is represented by the National Economic Development Authority (NEDA). Under the portfolio, there are implementing partners and responsible partners. The responsible partners are the direct proponents of projects, referred to in this study.

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<sup>30</sup> *Declaration on the Right to Development, United nations. 1985*

<sup>31</sup> UNDP, Rights-Based Development Training Manual. July 2002. p.59

<sup>32</sup> Ibid. pp. 78-83

## Appendix B

### HR PRINCIPLES AND THEIR MEANINGS<sup>1</sup>

PRINCIPLES	PURPOSES & MEANING <sup>1</sup>
Accountability	<ul style="list-style-type: none"> <li>▪ Determines both the essence and modes of conduct of development and governance</li> <li>▪ Authority of government is based on the will and consent of the people; and</li> <li>▪ Government is answerable to the people for its decisions and actions</li> </ul>
Attention to Vulnerable Groups	<ul style="list-style-type: none"> <li>▪ Points to the essence of development and governance</li> <li>▪ Greater importance given to the disadvantaged/vulnerable; and</li> <li>▪ Measures taken up to help participate in the solution of their problems</li> </ul>
Empowerment	<ul style="list-style-type: none"> <li>▪ Determines both the essence and modes of conduct of development and governance</li> <li>▪ Power to act for or on their behalf to claim their rights entitlements; and</li> <li>▪ Capacitating them to contribute and participate.</li> </ul>
Equality	<ul style="list-style-type: none"> <li>▪ Determines both the essence and modes of conduct of development and governance</li> <li>▪ Women and men equally enjoy and exercise their rights and freedoms; and</li> <li>▪ Preferential treatment where there is impairment in the exercise of their rights and freedoms.</li> </ul>
Equity	<ul style="list-style-type: none"> <li>▪ Determines both the essence and modes of conduct of development and governance</li> <li>▪ Fairness, justice and impartiality in the guarantee of rights and freedoms; and</li> <li>▪ Equity demands that the poor should not be disproportionately burdened</li> </ul>
Good Governance	<ul style="list-style-type: none"> <li>▪ Specifies modes of conduct in the pursuit of development by relevant stakeholders and actors</li> <li>▪ Participatory, consensus oriented, accountable, transparent, efficient, effective, equitable and follows rule of law.</li> </ul>
Independence of the Judiciary	<ul style="list-style-type: none"> <li>▪ Specifies modes of conduct in the pursuit of development by relevant stakeholders and actors</li> <li>▪ Final arbiter on human rights;</li> <li>▪ Independence guaranteed; and</li> <li>▪ Decision rendered with impartiality without influence or pressure</li> </ul>
Indivisibility	<ul style="list-style-type: none"> <li>▪ Points to the essence of Development</li> <li>▪ Human rights are intertwined: the absence of one right negates the presence of the other;</li> <li>▪ Both sets of rights should be enjoyed: civil and political; and economic, social and cultural rights.</li> </ul>
Interdependence and inter-relatedness	<ul style="list-style-type: none"> <li>▪ Points to the essence of Development</li> <li>▪ Enjoyment or exercise of one right is dependent on the other;</li> <li>▪ No rights precede the other; and</li> <li>▪ Rights are interlinked with one another.</li> </ul>
Universality	<ul style="list-style-type: none"> <li>▪ Points to the essence of Development</li> <li>▪ Human Rights belong to all</li> <li>▪ Human Rights are based on principles that dignity is inherent to all</li> </ul>
Legislative Capacity	<ul style="list-style-type: none"> <li>▪ Specifies modes of conduct in the pursuit of development by relevant stakeholders and actors</li> <li>▪ Human Rights must be guaranteed by law;</li> <li>▪ Legislature must have the capacity to enact laws that uphold inherent dignity of person and the enjoyment, exercise and fulfillment of human rights.</li> </ul>
Rule of law	<ul style="list-style-type: none"> <li>▪ All persons are equal before the law and are entitled to equal protection</li> </ul>

PRINCIPLES	PURPOSES & MEANING <sup>1</sup>
	<ul style="list-style-type: none"> <li>Without an independent and honest judiciary there is a big risk that development will collapse</li> </ul>
Non-Discrimination	<ul style="list-style-type: none"> <li>Determines both the essence and modes of conduct of development</li> <li>Entitled to human rights without restriction, prohibitions, exclusions or preferences.</li> </ul>
Peoples' Participation	<ul style="list-style-type: none"> <li>Specifies modes of conduct in the pursuit of development by relevant stakeholders and actors</li> <li>Participant and contributor at all level of economic, social, and political decision making;</li> <li>Informed decision;</li> <li>Voluntary, effective and full without threats and sanctions; and</li> <li>Participation mechanisms made available.</li> </ul>
Transparency	<ul style="list-style-type: none"> <li>Specifies modes of conduct in the pursuit of development and governance by relevant stakeholders and actors</li> <li>People to see openly into the activities of government;</li> <li>Full, free and public disclosure of decision, policies and processes of government; and</li> <li>Access to information especially in rule making activity of government.</li> </ul>

## Appendix C

### NORMATIVE CONTENT/BASES OF HUMAN RIGHTS<sup>1</sup>

RIGHTS	CORE CONTENT/BASES
Right to Life	<p>The supreme and inherent human rights from which no derogation is permitted, even in time of war or public emergency. Whereas it begins at birth according to International Law, it begins at conception in the Philippine Law.</p> <p>Bases:</p> <p>Article 3 of UDHR; Article 6 of ICCPR; General Comment 6, HRC (1982); Article 5(b) of ICERD; Article 6 CRC; and Section 1 Article III of the 1987 Philippine Constitution</p>
Equality and Non-Discrimination	<p>This includes substantive equal protection of the law and enjoyment of all civil, political, economic, social and cultural rights. Its most important element is the distinction, exclusion, restriction, preference or prohibition of discrimination based on race, color, sex/gender, language, disability, descent, age, religion, political or other opinion, national or ethnic/social origin, property, birth or other status which has the effect or purpose of impairing/nullifying the recognition, enjoyment or exercise of human rights</p> <p><b>Bases:</b></p> <p><b>Equality:</b> Article 7 of UDHR; Article 3 of ICESR; Article 3 of ICCPR; Article 8(1) of the Right to Development; Article 5 of ICERD; Article 9&amp;15 of CEDAW;</p> <p>Section 1 Article III of the 1987 Philippine Constitution; and</p> <p><b>Non-Discrimination:</b> Article 7 of UDHR; Article 2(2) of ICESR; Article 2(1) &amp; 20(2) of ICCPR; Article 6(1) of the Right to Development; Article 1,3&amp;4 of ICERD; Article 1,2,4&amp;7 of CEDAW; and Article 2 of CRC.</p>
<p>Political Rights and Freedoms:</p> <p>Right to Participate in Government,</p> <p>Freedoms of Opinion and Expression,</p> <p>Freedom of Movement,</p> <p>Right of Peaceful Assembly and Association</p>	<p>These may be exercised directly or indirectly, individually or collectively but must be free, genuine exercise, and voluntary.</p> <p>- Take part in the government directly or indirectly through freely chosen representatives; equal access to public services; and the will of the people as basis of government authority</p> <p>Bases :</p> <p>Article 21 of UDHR; Article 5 of ICERD; and Section 16 Article III of the 1987 Philippine Constitution</p> <p>Article 12 of ICCPR; Section 6 Article III of the 1987 Philippine Constitution; Article 20 of UDHR; Article 20&amp;21 of ICCPR; Article 5(d) (ix) of ICERD; Article 15 of CRC; and Section 4 Article III of the 1987 Philippine Constitution.</p> <p>Article 19 of UDHR; Article 19 of ICCPR; Article 5(d) (viii) of ICERD; Article 12&amp;13 of CRC; Section 4 Article III of the 1987 Philippine Constitution</p>

RIGHTS	CORE CONTENT/BASES
	<ul style="list-style-type: none"> <li>- Freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers</li> <li>- Freedom of movement and residence within the borders of state, leave any country, including his own and return to his country and shall not be subject to any restrictions except those which are provided by law, consideration of national security, public order, public health or morals or the rights and freedoms of others.</li> <li>- No restrictions on the exercise of this right to peaceful assembly to include right to form and join trade unions for the protection of his interests except those in conformity with the law, in the interest of national security or public safety, public order, public health or protection of rights and freedoms of others</li> </ul>
Right to Social Security	<p>This is a right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances covering all risks involved in the loss of the means of livelihood or subsistence for reasons beyond a person's control</p> <p>Bases:</p> <p>Article 22 of UDHR; Article 9 of ICESCR; General Comment 5&amp;6 ICESR (1994/1995); Article 8(1) of the Right to Development; Article 11 (e) of CEDAW; and Article 25 of CRC</p>
Right to Work	<p>This right covers: free choice of employment; just and favorable conditions of work; protection against unemployment; equal pay for equal work, just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity; to form or join trade unions for the protection of his interests; equal opportunity to be promoted in employment; rest leisure and reasonable limitation of working hours, etc.</p> <p>Bases:</p> <p>Article 23 of UDHR; Article 6,7&amp;8 of ICESCR; Article 8(1) of the Right to Development; Article 5(e)(i)(ii) of ICERD; Article 11 of CEDAW; Article 32 of CRC; and Section 3 Article XIII of the 1987 Philippine Constitution</p>
Right to Health	<p>This is a right to access and enjoyment to health services and facilities, and to enjoy certain social conditions favorable to the highest attainable standard of health. Such right considers: availability in terms of functional health services, programs and facilities; accessibility in terms of information availability, physical and economic accessibility, cultural appropriateness and respectful of medical ethics and quality in terms of scientific &amp; medical appropriateness.</p> <p>Bases:</p> <p>Article 25 of UDHR; Article 12 of ICESCR; General Comment 14 ICESCR (2000); Article 8 of the Right to Development; Article 5(e) (iv) of ICERD; Article 12 of CEDAW; Article 24 of CRC; and Section 11, 12, &amp;13 Article XIII of the 1987 Philippine Constitution.</p>
Right to Food	<p>This covers availability, adequacy and physical and economic accessibility of food supply, and the stability of the supply. In addition, it is not limited to calories, proteins and specific nutrients. Likewise, it is linked to sustainability not only for the present but also for the future generations.</p> <p>Bases:</p> <p>Article 25 of UDHR; Article 11 of ICESCR; General Comment 12 ICESCR (1999); and Article 8 of the Right to Development</p>
Right to Housing	<p>This refers to the right to live somewhere in security, peace and dignity. Its core contents include the legal security of tenure, availability of infrastructure, facilities, materials and services, affordability, habitability in terms of space, protection and safety against structural and health hazards, accessibility, location, and cultural adequacy</p> <p>Bases:</p> <p>Article 25 of UDHR; Article 11 of ICESCR; General Comment 4 of ICESCR (1991); General Comment 7 of ICESCR (1997); Article 8 of the Right to Development; Article 5(e) (iii) of ICERD; Section 9&amp;10 and Article XIII of the 1987 Philippine Constitution.</p>

RIGHTS	CORE CONTENT/BASES
Right to Education	<p>Availability of Functioning educational institutions and existing programs in sufficient quantities; trained teachers; non-discriminating; physically and economically accessible; acceptable in terms of quality, cultural appropriateness; and flexibility and relevance. It also includes the right to free universal primary education, secondary higher, fundamental, technical and vocational educations. The government is also required to set up school system and to respect educational freedom, such as freedom of parents/guardians to choose the school for their children, and right of foreigners to set up schools.</p> <p>Bases:</p> <p>Article 26 of UDHR; Article 13 of ICESCR;  General Comment 11 of CESCR (1999);  General Comment 13 of CESCR (1999);  Article 8(1) of the Right to Development;  Article 5(e) (v) of CERD; Article 10 of CEDAW; Articles 28&amp;29 of CRC; and Article XIV of the 1987 Philippine Constitution.</p>
Right of Reparation	<p>This is an inherent right associated with an effective protection of human rights for the purpose of relieving and affording justice to victims. The victims can seek redress for human rights violations through restitution, compensation, rehabilitation, and non-repetition.</p> <p>Bases:</p> <p>Article 8 Universal Declaration of Human Rights;  Article 2(3a-c) ICCPR;  Article 5, Declaration on the Right to Development;  Article 6, CERD;  Articles 4 and 39, Convention on the Rights of the Child</p>